

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In The Matter Of:)
)
12132 HADLEY) ORDER
WHITTIER, CALIFORNIA)
) 88-05
PAUL C. SCHIRMER and MARILYN)
SCHIRMER,)
)
Respondents)
)
PROCEEDING UNDER SECTION 106(a))
OF THE COMPREHENSIVE ENVIRONMENTAL)
RESPONSE, COMPENSATION AND LIABILITY)
ACT OF 1980 (42 U.S.C. 9606(a)))

I. JURISDICTION

The following Order is issued on this date to PAUL C.
SCHIRMER and MARILYN SCHIRMER, (Respondents), pursuant to Section
106(a) of the Comprehensive Environmental Response, Compensation
and Liability Act of 1980 (CERCLA), 42 U.S.C. 9606(a) as amended
by the Superfund Amendments and Reauthorization Act of 1986
(SARA), Pub. L. No. 99-499, by authority delegated to the
undersigned by the Administrator of the United States
Environmental Protection Agency ("EPA"). Notice of the issuance
of this Order has heretofore been given to the State of California.
The Director, Toxics and Waste Management Division, EPA

1 Region 9 has determined that there may be an imminent and
2 substantial endangerment to the public health or welfare or the
3 environment because of an actual or threatened release of
4 hazardous substances from a warehouse compound at 12132 Hadley,
5 Whittier, California (the "facility").

6 This Order directs the aforementioned Respondents to under-
7 take actions to protect the public and the environment from this
8 endangerment.

9 II. FINDINGS OF FACT

10 A. Background

11 1. The facility, located at 12132 Hadley, Whittier,
12 California, contains a warehouse, a fenced enclosure (approx-
13 imately 10 feet by 20 feet), and a parking area adjacent to rail-
14 road tracks. Several hundred cardboard cartons, each containing
15 22 1.75 oz. tubes of a liquid fuel additive product labeled "New
16 Improved PROPEL," (PROPEL), are stacked in the fenced enclosure
17 at the facility. Many of the cartons have deteriorated and are
18 leaking PROPEL onto the ground. A drain directs runoff onto the
19 adjacent Union Pacific Railroad Company property, where an oily
20 stain from the runoff spreads for approximately 75 feet.

21 2. Prior to May, 1987, Respondent Paul C. Schirmer, moved
22 the PROPEL from the warehouse at the facility to the outdoor
23 fenced enclosure at the facility.

24 3. On 5/27/87 the Los Angeles County Department of Health
25 Services (the County) issued a directive to respondent Paul
26 Schirmer, owner of the facility, to provide a plan to remove the
27 PROPEL and soil contaminated with PROPEL.

28 4. On 6/9/87, the County issued a directive to respondent John

1 Kanavos, the alleged owner of the PROPEL according to information
2 gathered by the County, to remove the PROPEL and soil contaminated
3 with PROPEL from the facility.

4 5. On 10/7/87 the County inspected the facility and determined
5 that the PROPEL and contaminated soil was still on the property.

6 6. On 11/6/87 the County again inspected the facility and
7 found that a drain had been placed in a wall near the PROPEL
8 storage area, which drained runoff into an uncovered container on
9 the adjacent property owned by the Union Pacific Railroad Company.
10 The container had overflowed and a dark stain of soil stretched
11 75 feet from the container onto the Railroad property.

12 7. On 11/9/87, the County posted a notice at the facility
13 requiring respondent Paul Schirmer to present a plan to clean up
14 the PROPEL and contaminated soil.

15 8. On 11/19/87, the County requested assistance from EPA in
16 enforcing the cleanup of the facility.

17 9. The EPA has designated an On-Scene Coordinator ("OSC")
18 for the facility, pursuant to 40 C.F.R. Part 300.

19 B. Endangerment

20 10. Population at risk. Contaminated soil from runoff at the
21 facility is in an area near railroad tracks, used as a route
22 by school children to walk to Whittier High School. Whittier High
23 School is less than 75 feet from the facility. School children and
24 other passers-by may be exposed to the hazardous substances
25 through direct contact or through inhalation of vapors.

26 12. Substances of concern. PROPEL fuel additive. According
27 to the package, this substance contains neutral oils and basic
28 amines. Toxicity tests conducted by the San Jose Creek Water

1 Quality Control Laboratory have shown that the substance is acute
2 toxic to fish, killing 100% of subject minnows within 24 hours
3 at a concentration of 115 milligrams per liter. The substance is
4 highly ignitable, with a flash point measured at 80° F.

5 III. CONCLUSIONS OF LAW

6 1. Paul Curt Schirmer and Marilyn Schirmer are "persons" as
7 defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

8 2. The warehouse area at 12132 Hadley, Whittier, California,
9 is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C.
10 §9601(9).

11 3. Respondents Paul Curt Schirmer and Marilyn Schirmer owned
12 or operated the facility at the time the cartons containing
13 hazardous substances were disposed of at the facility, and are
14 responsible parties as provided in Section 107(a)(2) of CERCLA,
15 42 U.S.C. §9607(a)(2).

16 4. PROPEL fuel additive is a "hazardous substance," as defined
17 in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

18 5. There has been an actual "release", as defined in Section
19 101(22) of CERCLA, 42 U.S.C. §9601(22), of PROPEL fuel additive
20 into the environment.

21 6. There is a threat of "release", as defined in Section
22 101(22) of CERCLA, 42 U.S.C. §9601(22) of PROPEL fuel additive
23 into the environment.

24 IV. DETERMINATIONS

25 Based upon the foregoing Findings of Fact and Conclusions
26 of Law, the Director, Toxics and Waste Management Division, EPA
27 Region 9 has made the following determinations:
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1 1. The release and threatened release of hazardous substances
2 and pollutants or contaminants from the facility may present an
3 imminent and substantial endangerment to public health and welfare
4 and the environment.

5 2. In order to prevent or mitigate immediate and significant
6 risk of harm to human health and the environment, it is necessary
7 that removal action be taken immediately to contain and prevent
8 the release and potential release of hazardous substances,
9 pollutants or contaminants from the facility.

10 3. The response measures ordered herein are consistent
11 with the National Contingency Plan, 40 C.F.R. Part 300.

12 4. Respondents are jointly and severally liable for
13 conducting the actions ordered herein, which are necessary to
14 protect human health and the environment.

15 V. ORDER

16 Based upon the foregoing Findings of Fact, Conclusions of
17 Law and Determinations, Respondents are hereby ordered and directed
18 to implement the following measures:

19 1. Within fourteen (14) calendar days of the receipt
20 of this Order, Respondents shall submit to EPA a written proposal
21 with a schedule for the following activities:

22 a. Removal of all cartons from which the hazardous
23 substances are leaking from the facility, by a
24 certified environmental contractor.

25 b. Removal of soils contaminated by "PROPEL" from the
26 facility and from the adjacent area owned by Union
27 Pacific Railroad Company.
28

c. Sampling of soils to establish whether the clean-up is complete.

The proposal shall include a site safety plan for the activities to be performed.

3. Within seven (7) calendar days of EPA approval of the proposal, Respondents shall begin implementation of the proposal. Respondents shall fully implement the proposal as approved by EPA within the time period set forth in the schedule.

4. Within fourteen (14) calendar days of the completion of cleanup activities and the receipt of results from laboratory analysis of samples collected pursuant to this Order, Respondents shall submit to EPA a written report on the results of the cleanup activities and soil sampling.

5. Based on the cleanup report referenced in paragraph 4, above, EPA may determine that additional cleanup work is necessary to mitigate the release of hazardous substances. Within fourteen (14) days after receipt of EPA's notice regarding additional work, Respondents shall submit a proposal for performing the additional work.

6. No activities may be undertaken pursuant to this Order without the approval of EPA.

Respondents are further ordered as follows:

VI. COMPLIANCE WITH APPLICABLE LAWS

In carrying out the terms of this Order, Respondents shall comply with all federal, state and local laws and regulations. All hazardous substances/wastes removed from the facility must be handled in accordance with Subtitle C and Subtitle D of the Resource Conservation and Recovery Act, 42 U.S.C. §6921 et seq,

1 and the Hazardous Waste Control Law, California Health and Safety
2 Code §25100 et seq., and the regulations promulgated thereunder.

3 VII. SUBMITTALS

4 All submittals and notifications to EPA pursuant to this
5 Order shall be made to:

6 Director, Toxics and Waste Management Division
7 U.S. Environmental Protection Agency, Region 9
8 215 Fremont Street
San Francisco, California 94105

9 Copies of all submittals and notifications shall be sent to:

10 Richard Martyn
11 On-Scene Coordinator, T-4-9
12 U.S. Environmental Protection Agency, Region 9
215 Fremont St.
San Francisco, CA 94105

13 and:

14 Bonnie Shear
15 County of Los Angeles Department of Health Services, HMS
2615 S. Grand Ave., Rm. 607
16 Los Angeles, CA 90007

17 All approvals and decisions of EPA made regarding such
18 submittals and notifications shall be communicated to Respondents
19 by the Director, Toxics and Waste Management Division, U.S.
20 Environmental Protection Agency, Region 9 or his designee.
21 No informal advice, guidance, suggestions or comments by
22 EPA regarding reports, plans, specifications, schedules or any
23 other writing shall be construed to relieve the Respondents of
24 their obligation to obtain such formal approvals as may be
25 required herein.

26 VIII. ACCESS

27 Respondents shall grant access to employees and authorized
28 representatives of EPA, the California Department of Health

Services, and the Los Angeles County Department of Health Services to the facility. Nothing in this paragraph is intended to limit in any way the right of entry or inspection that EPA or any other agency may otherwise have by operation of law.

IX. ON-SCENE COORDINATOR

EPA has appointed an On-Scene Coordinator (OSC) who has the authority vested in the "On-Scene Coordinator" by 40 C.F.R. Part 300, et seq., published at 42 Fed. Reg. 31180 (July 16, 1982). That authority includes, without limitation, the right to: be on-site at all reasonable times; observe, take photographs and make other reports on the progress of the work as the OSC deems appropriate; and review records, files and documents relevant to the Order.

X. ENDANGERMENT DURING IMPLEMENTATION

In the event that the Director, Toxics and Waste Management Division, EPA, Region 9, or the OSC determines that any activities (whether pursued in implementation of or in noncompliance with this Order) or circumstances are endangering the health and welfare of people on the site or in the surrounding area or to the environment, the Director or the OSC may order the Respondents to stop further implementation of this Order for such period of time as needed to abate the endangerment.

XI. GOVERNMENT LIABILITIES

The United States Government shall not be liable for any injuries or damages to persons or property resulting from the acts or omissions of any Respondent, its employees, agents or contractors in carrying out activities pursuant to this Order, nor shall the Federal Government be held as a party to any

contract entered into by any Respondent, or its agents in carrying out activities pursuant to this Order.

XII. PENALTIES FOR NONCOMPLIANCE

A willful violation or failure or refusal to comply with this Order, or any portion thereof, may subject you to a civil penalty of not more than \$25,000 per each day in which a violation occurs or such failure to comply continues, pursuant to the provisions of Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1). Failure to comply with this Order, without sufficient cause, may also subject you to punitive damages in an amount up to three times the total of all costs incurred by the Government as a result of your failure to take proper action, pursuant to the provisions of Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3).

EPA may take over the removal action at any time if EPA determines that Respondents are not taking appropriate action to mitigate the site hazard. In the event EPA assumes responsibility for the removal action, Respondents shall be liable for all costs incurred by EPA to mitigate the site hazard. EPA may order additional removal or remedial actions deemed necessary by EPA to protect the public health and welfare or the environment.

XIII. OPPORTUNITY TO CONFER

You may request a conference with the Director, Toxics and Waste Management Division, EPA Region 9 or his staff to discuss the provisions of this Order. At any conference held pursuant to your request, you may appear in person or by counsel or other representatives for the purpose of presenting any objections, defenses or contentions which you may have regarding this Order. If you desire such a conference, you must make such request orally or in writing within one (1) week of receipt of this Order.

1 Please make any such request to either of the contact persons
2 listed below.

3 XIV. PARTIES BOUND

4 This Order shall apply to and be binding upon the Respon-
5 dents, their officers, directors, agents, employees, contractors,
6 successors and assigns.

7 XV. NOTICE OF INTENT TO COMPLY

8 Immediately upon receipt of this Order, Respondents shall
9 orally inform EPA of its intent to comply with the terms of this
10 Order. This shall be confirmed in writing within one (1) week
11 of receipt of this Order. Failure to notify EPA of the
12 Respondents' intent to comply will be construed by EPA as a
13 refusal to comply.

14 XVI. EFFECTIVE DATE

15 Notwithstanding any conferences requested pursuant to the
16 provisions of this Order, this Order is effective upon receipt,
17 and all times for performance shall be calculated from that date.

18 It is so ordered on this 23 day of December, 1987.

19
20 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

21
22 By: Jeff Zelikson

23 JEFF ZELIKSON
24 DIRECTOR, TOXICS & WASTE MANAGEMENT DIVISION
25 U.S. EPA, REGION 9
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1 Contacts

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